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6 *Proposed Attorneys for Debtor*  
7 *and Debtor in Possession*

8  
9 **UNITED STATES BANKRUPTCY COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **OAKLAND DIVISION**

12 In re  
13 GALILEO LEARNING, LLC<sup>1</sup>,  
14 Debtor.

Case No.

Chapter 11

**MOTION OF DEBTOR GALILEO  
LEARNING, LLC FOR ENTRY OF  
INTERIM AND FINAL ORDERS (I)  
AUTHORIZING USE OF CASH  
COLLATERAL; (II) GRANTING  
ADEQUATE PROTECTION; AND (III)  
SCHEDULING FINAL HEARING**

Date:  
Time:  
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28 <sup>1</sup> The last four digits of the Debtor's federal tax identification number are 9453. The  
mailing address for the Debtor is 1021 3rd Street, Oakland, California 94607.

1 Galileo Learning, LLC ("**Galileo**"), the debtor and debtor-in-possession in the  
2 above-captioned chapter 11 case (the "**Case**"), respectfully requests that the Court enter  
3 an interim order, in the form attached as **Exhibit A** hereto (the "**Interim Order**") and a  
4 final order, in the form attached as **Exhibit B** hereto (the "**Final Order**"), pursuant to  
5 sections 361, 363, 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§  
6 101, et seq. (the "**Bankruptcy Code**") (i) authorizing the use of cash collateral on an  
7 interim and final basis, (ii) granting adequate protection, and (iii) scheduling a final  
8 hearing. The Debtor is entitled to the requested relief because the entity that has a  
9 putative security interest in the Debtor's deposit accounts, the United States Small  
10 Business Administration (the "**SBA**") has the benefit of an "equity cushion" that is more  
11 than *twenty times greater* than the amount of the loan itself.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. JURISDICTION AND VENUE**

3 1. This Court has jurisdiction over the subject matter of this motion (the  
4 “**Motion**”) pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring Bankruptcy Cases*  
5 *and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal. Feb. 22, 2016), and  
6 Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District Court for the  
7 Northern District of California (the “**Bankruptcy Local Rules**”).

8 2. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is  
9 proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

10 3. The statutory bases for the relief requested herein are sections 361, 363,  
11 1107 and 1108 of the Bankruptcy Code.

12 4. The Debtor consents to the entry by the Court of a final order with respect  
13 to this Motion.

14 **II. BACKGROUND**

15 5. On May 6, 2020 (the “**Petition Date**”), the Debtor commenced the Case by  
16 filing a voluntary petition under chapter 11 of the Bankruptcy Code.

17 6. The Debtor continues to operate its business and manage its property as a  
18 debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

19 7. No official committee of unsecured creditors has yet been appointed in the  
20 Case.

21 8. Some factual background relating to the Debtor and the events leading to  
22 the commencement of the Case is set forth in greater detail in the *Declaration of Glen E.*  
23 *Tripp in Support of “First Day Motions”* (the “**Tripp Declaration**”) filed contemporaneously  
24 with this Motion and incorporated herein by reference.

25 9. On or about April 21, 2020, Galileo obtained a \$500,000 “Secured Disaster  
26 Loan” (“**SDL**”) from the SBA. The loan bears an annual interest rate of 3.75% and is  
27 payable in three hundred forty-eight (348) equal monthly installments of principal and

28 ///

1 interest to be paid over a thirty (30) year period, with payments to commence one year  
2 from the date of the Promissory Note, on April 21, 2021.

3 10. The SDL is secured under a "Security Agreement," which provides for a  
4 pledge of, among other described collateral, "... all tangible and intangible personal  
5 property ("**Collateral**"), including, but not limited to: ... (h) deposit accounts..."

6 11. To date, to the best of Galileo's knowledge, after due and proper inquiry  
7 and investigation on the part of Galileo (including two UCC searches), the SBA has taken  
8 no steps to perfect its security interest in the Debtor's deposit accounts. The SBA has  
9 not requested that Galileo or its bank, the California Bank of Commerce, enter into a  
10 deposit account control agreement ("**DACA**"). Moreover, the SBA has filed no Uniform  
11 Commercial Code financing statements for the purpose of perfecting its security interest.

12 12. Galileo currently holds the aggregate amount of approximately \$6,244,000  
13 in its various deposit accounts, *including* certain restricted funds obtained through an  
14 April 13, 2020, \$2,539,805 Paycheck Protection Plan loan ("**PPP Loan**") administered by  
15 the SBA and implemented through the Coronavirus Aid, Relief, and Economic Security  
16 Act (the "**CARES Act**"). The PPP Loan, which was funded by the California Bank of  
17 Commerce, is *unsecured* and, if certain conditions are met, wholly or partially forgivable.

18 13. It is highly unlikely that Galileo's aggregate cash deposit account balances  
19 will drop below the \$500,000 level within the next six (6) months.

20 14. Moreover, the total value of the SBA's Collateral (if one takes into account  
21 "enterprise value" and includes the value of such tangible and intangible assets as cash,  
22 accounts receivable, prepaids, inventory, trade secrets, curriculum, and customer lists) is  
23 greater than \$10,000,000, which provides the SBA with an "equity cushion" of greater  
24 than \$9,500,000 with respect to its \$500,000 loan. *In short, the value of the Collateral is*  
25 *at a minimum, fifteen (15) to twenty (20) times greater than the SDL.*

26 15. If the Debtor is shut down for even a short time because it is denied the use  
27 of cash collateral, many of its employees (who depend upon their paychecks to support  
28 themselves and their families) will depart, some or all of its proposed bankruptcy

1 professionals will cease working on the case, it will be unable to purchase necessary  
2 goods and services, and the Debtors' reorganization effort will be seriously jeopardized, if  
3 not permanently shut down.

### 4 **III. RELIEF REQUESTED**

5 16. By this Motion, the Debtor requests that this Court enter an order pursuant  
6 to sections 361 and 363 of the Bankruptcy Code (i) authorizing the use of cash collateral  
7 on an interim and final basis, (ii) granting adequate protection in the form of replacement  
8 liens (but only to extent that the SBA's purported existing liens are currently perfected),  
9 and (iii) scheduling a final hearing on the Motion.

### 10 **IV. LEGAL ARGUMENT**

11 17. Under section 363(c)(2) of the Bankruptcy Code, a debtor in possession  
12 may not use cash collateral unless (a) each entity that has an interest in such collateral  
13 consents; or (b) the court, after notice and a hearing, authorizes such use, sale or lease  
14 in accordance with the provisions of this section. 11 U.S.C. §363(c)(2).

15 18. In the case at bar, the Court should allow the use of cash collateral because  
16 the interest of the SBA are adequately protected.

17 19. Section 361 of the Bankruptcy Code provides a *non-exclusive* list of ways to  
18 provide adequate protection, including periodic cash payments, the grant of liens on new  
19 collateral, and replacement liens. 11 U.S.C. §361. What constitutes adequate protection  
20 must be decided on a case by case basis. *In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir.  
21 1987). The focus of the adequate protection requirement is to protect a secured creditor  
22 from diminution in the value of its interest in the collateral during the period of use. *In re*  
23 *Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3rd Cir. 1994).

24 20. The Debtor submits that the proposed adequate protection to be provided  
25 to the SBA, specifically, the granting of replacement liens in all of the Debtor's post-  
26 petition assets *to the extent that the SBA's prepetition liens were duly and properly*  
27 *perfected*, is sufficient under the particular circumstances of this Case.

28 ///

1           21. Courts have found a secured creditor adequately protected where either a  
2 sufficient equity cushion in the collateral exists to protect the secured creditor, or the level  
3 of the secured creditor's collateral is not decreasing over time. See, e.g., *In re Mellor*, 734  
4 F.2d 1396, 1400 (9th Cir. 1984) ("Although the existence of an equity cushion as a  
5 method of adequate protection is not specifically mentioned in § 361, it is the classic form  
6 of protection for a secured debt justifying the restraint of lien enforcement by a  
7 bankruptcy court."); *In re Phoenix Steel Corp.*, 39 B.R. 218, 224 (D. Del. 1984) ("It is clear  
8 that if a sufficient equity cushion exists, [a creditor's] security would not be impaired and  
9 they would be adequately protected."); *In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.  
10 N.H. 1993) (finding that secured creditor was adequately protected and debtor was  
11 authorized to use cash collateral where level of collateral was not declining).

12           22. Furthermore, case law indicates an equity cushion of 20% or more is  
13 independently sufficient to provide adequate protection. See, e.g., *In re C.B.G. Ltd.*, 150  
14 B.R. 570, 573 (Bankr. M.D. Pa. 1992) (noting that an equity cushion of 20% or more  
15 constitutes adequate protection, less than 11% is insufficient, and a range of 12% to 20%  
16 has divided courts).

17           23. In the case at bar, the SBA has an equity cushion that is *fifteen (15) to*  
18 *twenty (20) times greater than the amount of the loan*. This remarkable fact, alone,  
19 justifies the use of cash collateral. Moreover, the Debtor currently has approximately  
20 \$7,000,000 in cash in its bank accounts. As reported above, it is highly unlikely that  
21 Galileo's aggregate cash deposit account balances will drop below the \$500,000 level  
22 within the next six (6) months. Finally, the SBA has not even acted to perfect its lien in  
23 the Debtor's deposit accounts.

24 **V. INTERIM APPROVAL AND SCHEDULING A FINAL HEARING**

25           24. In order to avoid immediate and irreparable harm and prejudice to the  
26 Debtor, its estate and all parties in interest, the Debtor requests that the Court authorize  
27 the Debtor to use cash collateral on an interim basis and schedule a hearing to consider  
28 entry of a final order.

1 **VI. NOTICE**

2 25. The Debtor will serve notice of this Motion upon: (i) the Office of the United  
3 States Trustee; (ii) the Debtor's list of creditors holding the thirty (30) largest unsecured  
4 claims; (iii) the Internal Revenue Service; (iv) the United States Attorney's Office for the  
5 Northern District of California; (v) the Small Business Administration; and (vi) all parties  
6 who have formally appeared in this Chapter 11 Case and requested service pursuant to  
7 Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor submits  
8 that no other or further notice is necessary.

9 No prior motion for the relief requested herein has been made by the Debtor to this  
10 or any other court.

11 WHEREFORE, the Debtor respectfully requests that this Court enter an interim  
12 order, in the form attached hereto as **Exhibit A** and a final order, in the form attached  
13 hereto as **Exhibit B**: (i) authorizing the use of cash collateral on an interim basis; (ii)  
14 granting adequate protection; (iii) scheduling a final hearing; and (iv) granting the Debtor  
15 such other and further relief as is just and proper under the circumstances.

16  
17 DATED: May 6, 2020

Respectfully submitted,

18 HANSON BRIDGETT LLP

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20  
21 By: /s/ Neal L. Wolf

22 NEAL L. WOLF  
ANTHONY J. DUTRA

23 *Proposed Attorneys for Debtor*  
24 *and Debtor in Possession*





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14 GALILEO LEARNING, LLC<sup>1</sup>, a California  
15 Limited Liability Company,  
16 Debtor.

Case No.

Chapter 11

**INTERIM ORDER (A) AUTHORIZING  
POST-PETITION USE OF CASH  
COLLATERAL, (B) GRANTING  
ADEQUATE PROTECTION, (C)  
SCHEDULING A FINAL HEARING  
PURSUANT TO BANKRUPTCY RULE  
4001(B), AND (D) GRANTING RELATED  
RELIEF**

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28 <sup>1</sup> The last four digits of the Debtor's federal tax identification number are 9453. The  
mailing address for the Debtor is 1021 3rd Street, Oakland, California 94607.

1       The above captioned Debtor having filed the (“**Motion**”) for entry of an interim  
2 order (the “**Interim Order**”) and final order (the “**Final Order**”) pursuant to section 105,  
3 361, 362, and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as  
4 amended, the “**Bankruptcy Code**”); and the Court having considered the Motion, the  
5 *Declaration of Glen E. Tripp in Support of Debtor’s “First Day Motions”* and the evidence  
6 submitted at the interim hearing held before the Court on May \_\_\_, 2020 (the “**Interim**  
7 **Hearing**”) to consider entry of the Interim Order; and it appearing that approval of the  
8 interim relief requested in the Motion is necessary to avoid immediate and irreparable  
9 harm to the Debtor pending the Final Hearing and is otherwise fair and reasonable and in  
10 the best interests of the Debtor, its creditors and its estate pending the Final Hearing; and  
11 is essential for the continued operation of Debtor’s business, and after due deliberation  
12 and consideration, and good and sufficient cause appearing therefor,

13       **THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**  
14 **CONCLUSIONS OF LAW:**

15       A.     On May 6, 2020 (the “**Petition Date**”), Debtor filed a petition for relief under  
16 Chapter 11 of the United States Bankruptcy Code commencing this case (the “**Chapter**  
17 **11 Case**”). The Debtor is in possession of its property and continues to operate and  
18 manage its business as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the  
19 Bankruptcy Code. No request has been made for the appointment of a trustee or  
20 examiner. As of the date hereof, no official committee of unsecured creditors (together  
21 with any other statutory committee, a “**Committee**”) has been appointed in the Chapter  
22 11 Case.

23       B.     The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334,  
24 the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General  
25 Order 24 (N.D. Cal. Feb. 22, 2016), and Rule 5011-1(a) of the Bankruptcy Local Rules for  
26 the United States District Court for the Northern District of California (the “**Bankruptcy**  
27 **Local Rules**”). The Court further finds that this proceeding is a core proceeding pursuant  
28 to 28 U.S.C. §157(b)(2) and the Court may enter a final order hereon consistent with

1 Article III of the U.S. Constitution. The Court further finds that venue of this proceeding is  
2 proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3 C. The statutory bases for the relief requested herein are sections 105(a), 361,  
4 362 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the  
5 “**Bankruptcy Code**”), and Rule 4001 of the Federal Rules of Bankruptcy Procedure (as  
6 amended, the “**Bankruptcy Rules**”).

7 D. Notice of the Interim Hearing and the relief requested in the Motion has  
8 been given to (i) the Office of the United States Trustee, (ii) the creditors holding the  
9 twenty (20) largest unsecured claims against the Debtor; (iii) the Internal Revenue  
10 Service; (iv) the United States Attorney’s Office for the Northern District of California; (v)  
11 all other parties entitled to notice; and (vi) the United States Small Business  
12 Administration (“**SBA**”). Under the circumstances, such notice of the Interim Hearing and  
13 the relief requested in the Motion is sufficient and no other or further notice need be  
14 provided.

15 E. The Debtor has a pressing need for the immediate use of Cash Collateral  
16 (as defined below) to continue operating as a going concern (including funding its day-to-  
17 day operations which includes payroll, vendors, and the costs of this Chapter 11 Case),  
18 minimize disruption, rebut any skepticism regarding the Debtor’s ability to operate as a  
19 going-concern and stabilize business operations in response to this Chapter 11 Case. In  
20 the absence of the immediate use of the Cash Collateral, serious and irreparable harm to  
21 the Debtor and its estate will occur and impair the Debtor’s efforts to reorganize.

22 F. On or about April 21, 2020, Galileo obtained a \$500,000 “Secured Disaster  
23 Loan” (“**SDL**”) from the SBA. The loan bears an annual interest rate of 3.75% and is  
24 payable in three hundred forty-eight (348) equal monthly installments of principal and  
25 interest to be paid over a thirty (30) year period, with payments to commence one year  
26 from the date of the Promissory Note, on April 21, 2021.

27 G. The SDL is secured under a “Security Agreement,” which provides for a  
28 pledge of, among other described collateral, “... all tangible and intangible personal

1 property ("Collateral"), including, but not limited to: ... (h) deposit accounts..."

2 H. To date, to the best of Galileo's knowledge, after due and proper inquiry  
3 and investigation on the part of Galileo (including two UCC searches), the SBA has taken  
4 no steps to perfect its security interest in the Debtor's deposit accounts. The SBA has  
5 not requested that Galileo or its bank, the California Bank of Commerce, enter into a  
6 deposit account control agreement ("**DACA**"). Moreover, the SBA has filed no Uniform  
7 Commercial Code financing statements for the purpose of perfecting its security interest.

8 I. Galileo currently holds the aggregate amount of approximately \$6,244,000  
9 in its various deposit accounts, including certain restricted funds obtained through an  
10 April 13, 2020, \$2,539,805 Paycheck Protection Plan loan ("**PPP Loan**") administered by  
11 the SBA and implemented through the Coronavirus Aid, Relief, and Economic Security  
12 Act (the "**CARES Act**"). The PPP Loan, which was funded by the California Bank of  
13 Commerce, is unsecured and, if certain conditions are met, wholly or partially forgivable.

14 J. The Debtor believes that it is highly unlikely that Galileo's aggregate cash  
15 deposit account balances will drop below the \$500,000 level within the next six (6)  
16 months.

17 K. Moreover, the total value of the SBA's Collateral (if one takes into account  
18 "enterprise value" and includes the value of such tangible and intangible assets as cash,  
19 accounts receivable, prepaids, inventory, trade secrets, curriculum, and customer lists) is  
20 greater than \$10,000,000, which provides the SBA with an "equity cushion" of greater  
21 than \$9,500,000 with respect to its \$500,000 loan. In short, the value of the Collateral is  
22 at a minimum, fifteen (15) to twenty (20) times greater than the SDL.

23 L. While the SBA might otherwise be entitled to adequate protection of its  
24 interests in the Collateral and the proceeds thereof, in this Case, the SBA is protected by  
25 an extremely large equity cushion.

26 M. Based on the record presented to the Court by the Debtor at the Interim  
27 Hearing, the terms of the use of Cash Collateral as set forth herein are fair and  
28 reasonable.

1 N. The Debtor has requested immediate entry of this Interim Order pursuant to  
2 Bankruptcy Rules 4001(b)(2) and 4001(d). The permission granted herein to use the  
3 Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtor. This  
4 Court concludes that entry of this Interim Order is in the best interest of the Debtor's  
5 estates and its creditors.

6 **IT IS THEREFORE ORDERED** that:

7 1. The Motion is hereby **GRANTED**, on an interim basis, to the extent set forth  
8 in this Interim Order. Any objections to the Motion with respect to entry of this Interim  
9 Order to the extent not withdrawn, waived or otherwise resolved, and all reservation of  
10 rights included therein, are hereby denied and overruled. The rights of all parties in  
11 interest to object to the entry of a Final Order on the Motion are reserved.

12 2. As adequate protection for the interest of the SBA, for, and solely to the  
13 extent of, any diminution in the value of the SBA's interest in the Collateral resulting from  
14 (i) the Debtor's use of Cash Collateral, (ii) the use, sale, or lease of the Collateral (other  
15 than Cash Collateral) pursuant to section 363(c) of the Bankruptcy Code, and (iii) the  
16 imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, the  
17 SBA is hereby granted a continuing replacement security interest in, and lien (collectively,  
18 the "Replacement Liens"), which Replacement Liens shall have the same priority, validity,  
19 force, extent, status of perfection (if any), and effect as the liens that they replace,  
20 effective as of the Petition Date without the necessity of the SBA taking any further  
21 action, upon the right, title and interest in the following property of the Debtor:

- 22 a. All pre-petition Collateral of the SBA, including all proceeds, profits,  
23 rents, and products thereof; and  
24 b. Property acquired by the Debtor after the Petition Date, which is of  
25 the same nature, kind, and character as the prepetition Collateral,  
26 and all proceeds, profits, rents, and products thereof.

27 3. Nothing herein shall waive, impair, or preclude the right of the Debtor, or  
28 any other party in interest, to seek to avoid the liens of the SBA on the grounds that said

1 liens were not perfected in a due and proper manner, or on any other appropriate  
2 grounds.

3 4. Debtor's ability to use Cash Collateral under this Interim Order shall  
4 terminate upon the entry of the Final Order or additional interim order regarding use of  
5 Cash Collateral.

6 5. Notwithstanding Bankruptcy Rule 4001(a)(1), this Interim Order is not  
7 stayed and shall be effective upon the date of its entry on the docket.

8 6. The automatic stay of section 362 of the Bankruptcy Code is hereby  
9 modified to permit the performance of each and every right and obligation set forth in this  
10 Interim Order.

11 7. The Debtor is hereby authorized to take such actions and to execute such  
12 documents as may be necessary to implement the relief granted by this Final Order.

13 8. This Interim Order shall constitute findings of fact and conclusions of law  
14 pursuant to Bankruptcy Rule 7052 and shall take effect immediately, notwithstanding  
15 anything to the contrary proscribed by applicable law.

16 9. The Court has and will retain jurisdiction to enforce this Interim Order  
17 according to its terms.

18 10. The Final Hearing will be held on \_\_\_\_\_, 2020 at \_\_\_\_ a.m./p.m.  
19 (PDST). The Debtor shall, on or before \_\_\_\_\_, 2020, mail copies of a notice of the  
20 entry of this Interim Order, together with a copy of this Interim Order and a copy of the  
21 Motion, to the parties having been given notice of the Interim Hearing, to any party that  
22 has filed prior to such date a request for notices with this Court and to counsel for the  
23 Committee (if any) and any other statutory committee of unsecured creditors appointed  
24 pursuant to Bankruptcy Code section 1102, the Internal Revenue Service, all state taxing  
25 authorities in the states in which the Debtor has tax liability, any federal or state  
26 regulatory authorities governing the Debtor's industry, the U.S. Attorney's Office, the  
27 California and Illinois Attorneys General, counsel to the SBA, and all parties asserting  
28 liens against or security interest in, any of the collateral that is addressed in this Interim

1 Order. The notice of entry of this Interim Order shall state that any party in interest  
2 objecting to the entry of the Final Order authorizing the use of Cash Collateral shall file  
3 written objections with the United States Bankruptcy Court Clerk for the Northern District  
4 of California no later than 4:00 p.m. (PDST) on \_\_\_\_\_, 2020, and objections shall be  
5 served so that the same are received on or before such date to: (i) proposed counsel to  
6 the Debtor: Hanson Bridgett LLP, 1676 N. California Blvd., Suite 620, Walnut Creek, CA  
7 94596, Attn: Neal Wolf (nwolf@hansonbridgett.com), (ii) counsel to any statutory  
8 committee appointed in these Chapter 11 Cases; and (iii) the U.S. Trustee,  
9 \_\_\_\_\_, Attn: \_\_\_\_\_).

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11 \*\*\* END OF ORDER\*\*\*  
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13 In re  
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15 Limited Liability Company,  
16 Debtor.

Case No.

Chapter 11

**FINAL ORDER (A) AUTHORIZING  
POST-PETITION USE OF CASH  
COLLATERAL, (B) GRANTING  
ADEQUATE PROTECTION, (C)  
SCHEDULING A FINAL HEARING  
PURSUANT TO BANKRUPTCY RULE  
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1 The above captioned Debtor having filed the (“**Motion**”) for entry of an interim  
2 order (the “**Interim Order**”) and final order (the “**Final Order**”) pursuant to section 105,  
3 361, 362, and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as  
4 amended, the “**Bankruptcy Code**”); and the Court having considered the Motion, the  
5 *Declaration of Glen E. Tripp in Support of Debtor’s “First Day Motions”* and the evidence  
6 submitted at the interim hearing held before the Court on May \_\_\_, 2020 (the “**Interim**  
7 **Hearing**”) to consider entry of the Interim Order; and the Interim Order having been  
8 entered on May \_\_\_, 2020; and notice of the final hearing (“**Final Hearing**”) on the Motion  
9 having been given to all appropriate parties on a timely basis in accordance with the  
10 terms and conditions of the Interim Order; and a hearing on the Final Order having been  
11 conducted on \_\_\_\_\_; and the Court having considered the arguments of counsel  
12 and evidence presented at said Final Hearing; and, after due deliberation and  
13 consideration, the Court having determined that entry of the Final Order is otherwise fair  
14 and reasonable and in the best interests of the Debtor, its creditors and its estate; and  
15 good and sufficient cause appearing therefor,

16 **THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**  
17 **CONCLUSIONS OF LAW:**

18 A. On May 6, 2020 (the “**Petition Date**”), Debtor filed a petition for relief under  
19 Chapter 11 of the United States Bankruptcy Code commencing this case (the “**Chapter**  
20 **11 Case**”). The Debtor is in possession of its property and continues to operate and  
21 manage its business as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the  
22 Bankruptcy Code. No request has been made for the appointment of a trustee or  
23 examiner. As of the date hereof, no official committee of unsecured creditors (together  
24 with any other statutory committee, a “**Committee**”) has been appointed in the Chapter  
25 11 Case.

26 B. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334,  
27 the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General  
28 Order 24 (N.D. Cal. Feb. 22, 2016), and Rule 5011-1(a) of the Bankruptcy Local Rules for

1 the United States District Court for the Northern District of California (the “**Bankruptcy**  
2 **Local Rules**”). The Court further finds that this proceeding is a core proceeding pursuant  
3 to 28 U.S.C. §157(b)(2) and the Court may enter a final order hereon consistent with  
4 Article III of the U.S. Constitution. The Court further finds that venue of this proceeding is  
5 proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

6 C. The statutory bases for the relief requested herein are sections 105(a), 361,  
7 362 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the  
8 “**Bankruptcy Code**”), and Rule 4001 of the Federal Rules of Bankruptcy Procedure (as  
9 amended, the “**Bankruptcy Rules**”).

10 D. Notice of the Final Hearing and the relief requested in the Motion has been  
11 given to (i) the Office of the United States Trustee, (ii) the creditors holding the twenty  
12 (20) largest unsecured claims against the Debtor; (iii) the Internal Revenue Service; (iv)  
13 the United States Attorney’s Office for the Northern District of California; (v) all other  
14 parties entitled to notice; and (vi) the United States Small Business Administration  
15 (“**SBA**”). Under the circumstances, such notice of the Final Hearing and the relief  
16 requested in the Motion is sufficient and no other or further notice need be provided.

17 E. The Debtor has a pressing need for the immediate and continued use of  
18 Cash Collateral (as defined below) to continue operating as a going concern (including  
19 funding its day-to-day operations which includes payroll, vendors, and the costs of this  
20 Chapter 11 Case), minimize disruption, rebut any skepticism regarding the Debtor’s  
21 ability to operate as a going-concern and stabilize business operations in response to this  
22 Chapter 11 Case. In the absence of the immediate use of the Cash Collateral, serious  
23 and irreparable harm to the Debtor and its estate will occur and impair the Debtor’s  
24 efforts to reorganize.

25 F. On or about April 21, 2020, Galileo obtained a \$500,000 “Secured Disaster  
26 Loan” (“**SDL**”) from the SBA. The loan bears an annual interest rate of 3.75% and is  
27 payable in three hundred forty-eight (348) equal monthly installments of principal and  
28 interest to be paid over a thirty (30) year period, with payments to commence one year

1 from the date of the Promissory Note, on April 21, 2021.

2 G. The SDL is secured under a "Security Agreement," which provides for a  
3 pledge of, among other described collateral, "... all tangible and intangible personal  
4 property ("Collateral"), including, but not limited to: ... (h) deposit accounts..."

5 H. To date, to the best of Galileo's knowledge, after due and proper inquiry  
6 and investigation on the part of Galileo (including two UCC searches), the SBA has taken  
7 no steps to perfect its security interest in the Debtor's deposit accounts. The SBA has  
8 not requested that Galileo or its bank, the California Bank of Commerce, enter into a  
9 deposit account control agreement ("**DACA**"). Moreover, the SBA has filed no Uniform  
10 Commercial Code financing statements for the purpose of perfecting its security interest.

11 I. Galileo currently holds the aggregate amount of approximately \$6,244,000  
12 in its various deposit accounts, including certain restricted funds obtained through an  
13 April 13, 2020, \$2,539,805 Paycheck Protection Plan loan ("**PPP Loan**") administered by  
14 the SBA and implemented through the Coronavirus Aid, Relief, and Economic Security  
15 Act (the "**CARES Act**"). The PPP Loan, which was funded by the California Bank of  
16 Commerce, is unsecured and, if certain conditions are met, wholly or partially forgivable.

17 J. The Debtor believes that it is highly unlikely that Galileo's aggregate cash  
18 deposit account balances will drop below the \$500,000 level within the next six (6)  
19 months.

20 K. Moreover, the total value of the SBA's Collateral (if one takes into account  
21 "enterprise value" and includes the value of such tangible and intangible assets as cash,  
22 accounts receivable, prepaids, inventory, trade secrets, curriculum, and customer lists) is  
23 greater than \$10,000,000, which provides the SBA with an "equity cushion" of greater  
24 than \$9,500,000 with respect to its \$500,000 loan. In short, the value of the Collateral is  
25 at a minimum, fifteen (15) to twenty (20) times greater than the SDL.

26 L. While the SBA might otherwise be entitled to adequate protection of its  
27 interests in the Collateral and the proceeds thereof, in this Case, the SBA is protected by  
28 an extremely large equity cushion.

1 M. Based on the record presented to the Court by the Debtor at the Interim  
2 Hearing and the Final Hearing, the terms of the use of Cash Collateral as set forth herein  
3 are fair and reasonable.

4 N. The Court concludes that entry of this Final Order is in the best interest of  
5 the Debtor's estates and its creditors.

6 **IT IS THEREFORE ORDERED** that:

7 1. The Motion is hereby **GRANTED**, on a final basis. Any objections to the  
8 Motion with respect to entry of this Final Order to the extent not withdrawn, waived or  
9 otherwise resolved, and all reservation of rights included therein, are hereby denied and  
10 overruled.

11 2. As adequate protection for the interest of the SBA, for, and solely to the  
12 extent of, any diminution in the value of the SBA's interest in the Collateral resulting from  
13 (i) the Debtor's use of Cash Collateral, (ii) the use, sale, or lease of the Collateral (other  
14 than Cash Collateral) pursuant to section 363(c) of the Bankruptcy Code, and (iii) the  
15 imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, the  
16 SBA is hereby granted a continuing replacement security interest in, and lien (collectively,  
17 the "Replacement Liens"), which Replacement Liens shall have the same priority, validity,  
18 force, extent, status of perfection (if any), and effect as the liens that they replace,  
19 effective as of the Petition Date without the necessity of the SBA taking any further  
20 action, upon the right, title and interest in the following property of the Debtor:

- 21 a. All pre-petition Collateral of the SBA, including all proceeds, profits,  
22 rents, and products thereof; and  
23 b. Property acquired by the Debtor after the Petition Date, which is of  
24 the same nature, kind, and character as the prepetition Collateral,  
25 and all proceeds, profits, rents, and products thereof.

26 3. Nothing in this Final Order shall impair or restrict any right on the part of the  
27 Debtor, or any other party in interest, to challenge or seek to avoid the purported lien of  
28 the SBA on the grounds that said lien has not been duly or properly perfected, or on any

1 other grounds.

2 4. Notwithstanding Bankruptcy Rules 4001(a)(1) and 6004(h), to the extent  
3 applicable, this Final Order is not stayed and shall be effective upon the date of its entry  
4 on the docket.

5 5. The automatic stay of section 362 of the Bankruptcy Code is hereby  
6 modified to permit the performance of each and every right and obligation set forth in this  
7 Final Order.

8 6. The Debtor is hereby authorized to take such actions and to execute such  
9 documents as may be necessary to implement the relief granted by this Final Order.

10 7. This Final Order shall constitute findings of fact and conclusions of law  
11 pursuant to Bankruptcy Rule 7052 and shall take effect immediately, notwithstanding  
12 anything to the contrary proscribed by applicable law.

13 8. The Court has and will retain jurisdiction to enforce this Final Order  
14 according to its terms.

15 \*\*\* END OF ORDER\*\*\*

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